

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
05/09/2002

04/29/2002

CLERK OF THE COURT
FORM D000A

HONORABLE BRIAN K. ISHIKAWA

B. Wessing
Deputy

DR 2000-094890

FILED: _____

IN RE THE MARRIAGE OF
VANESSA ANN NICHOLS

JOHN E HERRICK

AND

BRYON NEVELE NICHOLS

HARRY P FRIEDLANDER

AL SILBERMAN
2600 E SOUTHERN AVE C3
TEMPE AZ 85282

MINUTE ENTRY

10:31 a.m. This is the time set for **Return Hearing on Order to Show Cause re: Temporary Orders**. Petitioner is present and is represented by above-named counsel. Respondent is present and is represented by above-named counsel.

Court Reporter, Kathy Incavo, is present.

Discussion is held regarding the status of the case.

Counsel for Petitioner advises the Court regarding the fact that a Consent Decree was submitted to Judge Pro Tem Myra Harris and that Judge Pro Tem Harris rejected the Consent Decree based upon the fact that there was no child support amount listed in the Decree because the parties had provided that Expedited Services would determine the child support amount.

Counsel for Petitioner further advises the Court that the parties have since attended an Expedited Services hearing, but

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that Petitioner/Mother has filed an Objection to the Decree and has elected to withdraw from the Consent Decree.

Counsel for Petitioner indicates that the matter which brought about today's hearing was based on the fact that Petitioner filed a Petition for Immediate Relief Relative to Interim Custody of the Children, alleging that Father kept the children for a period of several weeks contrary to the provisions of the Consent Decree and contrary to the best interests of the children.

Counsel for Petitioner further indicates that the children were ultimately returned to Mother at the end of March and Mother has allowed Father a couple of weekend visits in the interim.

Counsel for Petitioner further indicates that Father has since filed a Petition for orders and that both Petitions were set for a hearing this morning.

The Court indicates that it would be inclined to set this matter for a hearing on both the issues presented by Counsel for Petitioner on behalf of Petitioner and on the issues presented in the Petition filed by Counsel for Respondent on April 17, 2002.

Counsel for Petitioner's oral request for appointment of a custody evaluator is discussed. Counsel for Respondent does not oppose the appointment of a custody evaluator.

Counsel for Respondent's oral request that the Court enforce the parenting time and custody provisions as set forth in the original Consent Decree is discussed.

Counsel for Petitioner opposes Counsel for Respondent's request to enforce the custody and parenting time provisions.

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The parties having not reached any agreements in this matter,

IT IS ORDERED setting this matter for an **Order to Show Cause Hearing re: Temporary Orders on June 19, 2002 at 10:30 a.m.** in this Division, 222 East Javelina Drive, Courtroom 403, Mesa, Arizona 85210. (**Time allotted: 1 hour; presumptive time allocation: 25 minutes per side**).

ISSUES: Custody, parenting time, drug testing of Respondent, child support, spousal maintenance, mental examination of Petitioner, issue with regard to the Family Custody Advisor, issues with regard to the Consent Decree and attorney's fees and costs.

IT IS FURTHER ORDERED that the parties and, if represented, counsel shall meet in person no less than five (5) days prior to the date set for hearing, unless an Order of Protection is in effect. At this meeting, the parties and if represented, counsel shall use their best efforts to resolve the issues raised in the petition or motion now scheduled for hearing.

IT IS FURTHER ORDERED that the parties and, if represented, counsel shall exchange no less than five (5) days prior to the hearing current affidavits of financial information, any worksheets for support and any exhibits they shall seek to admit into evidence. Counsel shall also exchange and provide to the Court a list of witnesses they intend to call at the hearing. Any objections to the proposed evidence must be filed within three (3) days prior to the hearing.

IT IS FURTHER ORDERED any evidence intended to be submitted as exhibits at the time of hearing must be brought to this Division, Courtroom 403, by no later than 4:00 p.m., June 14, 2002, along with an attached cover sheet listing the description of the exhibits. Any exhibits not submitted by 4:00 p.m., June 14, 2002 will not be accepted.

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NOTE: ALL EXHIBITS MUST BE HAND-DELIVERED TO THIS DIVISION'S JUDICIAL STAFF AT (602) 506-5225/5121 BETWEEN THE HOURS OF 8:30 A.M. TO 12:00 P.M. AND 1:30 P.M. AND 4:00 P.M. ANY EXHIBITS DROPPED OFF IN JUDGE ISHIKAWA'S MAILBOX OR COURT ADMINISTRATION WITHOUT PRIOR ARRANGEMENTS WITH THIS DIVISION WILL BE REJECTED.

Failure to comply with the above Order may result in the imposition of sanctions.

PURSUANT TO RULE 5.1(C) OF THE ARIZONA RULES OF CIVIL PROCEDURE,

IT IS ORDERED THAT COUNSEL, OR ANY PARTY IF UNREPRESENTED BY COUNSEL, SHALL GIVE THIS COURT PROMPT NOTICE OF THE SETTLEMENT OF THE CASE OR MATTER SET FOR TRIAL, HEARING OR ARGUMENT BEFORE THE TRIAL, HEARING, ARGUMENT OR MATTER AWAITING COURT RULING. IN THE EVENT OF ANY UNREASONABLE DELAY IN THE GIVING OF SUCH NOTICE, THE COURT MAY IMPOSE SANCTIONS AGAINST COUNSEL OR THE PARTIES TO INSURE FUTURE COMPLIANCE WITH THIS RULE.

Discussion is held regarding interim parenting time for Father.

Pursuant to agreement of the parties,

IT IS ORDERED, on an interim basis, as follows:

- 1) Mother will be the primary residential parent for the two minor Children, Hunter Sage Nichols, dob: 04/20/97 and Jordan Isaiah Nichols, dob: 04/23/98.
- 2) Father will have parenting time with the two minor Children on alternating weekends from Thursday at 5:00 p.m. until Sunday at 5:00 p.m., beginning on Thursday, May 2, 2002.

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- 3) Dr. Al Silberman will be appointed as the custody evaluator.
- 4) Dr. Silberman's fees will be paid 50% by Mother and 50% by Father, subject to possible reallocation by the Court at a future date.

Vanessa Ann Nichols and Bryon Nevele Nichols are sworn and testify.

THE COURT FINDS that the parties have knowingly, voluntarily and intelligently entered into the agreement. The agreement is in the best interest of the minor Children, Hunter Sage Nichols, dob: 4/20/97 and Jordan Isaiah Nichols, dob: 04/23/98.

Pursuant to Rule 80(d), Arizona Rules of Civil Procedure, the agreement having been made in open Court,

THE COURT FINDS it is binding on the parties as entered on the record.

Pursuant to the parties' Rule 80(d) agreement and pursuant to A.R.S. Sections 405 and 406,

IT IS ORDERED appointing the following evaluator to evaluate the parties and their minor Children, Hunter Sage Nichols, dob: 04/20/97 and Jordan Isaiah Nichols, dob: 04/23/98:

Al Silberman
2600 E. Southern Ave., C3
Tempe, Arizona 85282

Phone: (480) 839-6264

IT IS FURTHER ORDERED that the evaluator shall notify the Court and counsel, or the parties if pro se, immediately upon

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receipt of this Order if he or she will not accept this appointment. Acceptance of the appointment indicates the capability of complying with the terms of this Order.

IT IS FURTHER ORDERED that the evaluation shall be conducted on the following basis:

1. Scope. The evaluator shall conduct a **full/focused** evaluation sufficient for the evaluator to render a written report with opinions and recommendations within a reasonable degree of probability as to:
 - The current custody and access plan which would be in the best interests of the parties' minor children after considering all relevant factors including those set forth in A.R.S. § 25-403.

The evaluator may make any other recommendations he or she determines the Court should consider to promote the physical, mental, moral or emotional health of the children. The evaluator may also assist the parties to resolve their dispute amicably if possible.

2. Timely Written Report. The evaluator shall prepare a written report not later than **June 18, 2002**; or if no date is specified, not later than fourteen (14) days prior to the next scheduled hearing. The report shall be delivered to the Court and counsel, or the parties if pro se, unless the evaluator asserts extraordinary circumstances, such as imminent life threat or the potential for serious harm to a person related to the case. In that event, the Court shall make a ruling regarding dissemination. The acceptance of this appointment by the evaluator indicates a capability of completing a written report in a timely manner and the ability to appear and testify in court upon reasonable notice.

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3. Initial Contact. Counsel for both parties, or the parties if pro se, shall make the initial contact with the evaluator through a joint conference or conference call within 10 days of receipt of this order and thereafter shall arrange for the appointments of the persons to be examined. The initial conference with the evaluator shall be used to summarize the issues present in this case, to arrange for the initial appointments of the persons the evaluator wishes to examine, and to allow the evaluator to request information he or she believes to be pertinent.
4. Authority of evaluator/Cooperation by Parties/Waiver of Confidentiality. The evaluator shall have the following authority with regard to the minor children and family members:

The evaluator shall serve as an expert for the Court in order to provide data and opinions relevant to the care of, custody of and access to the minor children in this case pursuant to applicable Arizona statutes and case law. The evaluator shall have: (a) Reasonable access to the children and family members with reasonable notice; and (b) Reasonable notice of any and all judicial proceedings including requests for any examination affecting the children and shall be provided copies of all minute entries, orders and pleadings filed in this case.

The evaluator shall also have access to:

- [I] all therapists of the children and parties;
- [II] all school and medical records of the children and parties;
- [III] any and all psychological testing or evaluations performed on the children or the parties;

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[IV] any and all teachers/child care providers for the children.

At the request of the evaluator, each party shall execute any and all releases or consents necessary to authorize the evaluator's access to the information described herein. No other clinicians (i.e., therapists, psychologists, social workers, etc.) are to work on this case during the course of the evaluation without the consent or authorization of the evaluator, unless otherwise authorized by court order.

The parties are informed that the Court is the identified client of the evaluator in this case. The evaluator serves the Court in this case; therefore, neither the parties nor their children are patients of the evaluator. There is no confidentiality relating to the parties' communications with/to the evaluator or concerning the evaluator's activities or recommendations. The evaluator may engage in written or verbal communication with any person he or she perceives capable of providing information relevant to the care and welfare of the children. The evaluator may interview and request the participation of any and all persons who the evaluator deems to have relevant information or to be useful participants.

The evaluator may request that the parties and/or children participate in adjunct services, to be provided by third parties, including but not limited to physical or psychological examinations, assessments, psychotherapy, co-parenting work, or alcohol and drug monitoring/testing. The Court shall allocate between the parties the cost of any adjunct service.

The evaluator shall be promptly provided all records, reports, and documents requested and shall receive the cooperation of all parties and counsel involved to ensure that the report is submitted by the date requested. This Order shall act as a release by the parties of all information requested by the evaluator and shall further obligate the parties for any

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costs associated with the production on those records to the evaluator. Any such costs shall be paid promptly.

5. No Ex-Parte Contact. The parties and counsel shall not have substantive ex-parte discussions with the evaluator, but shall conduct all communication through conference calls or conferences, unless agreed upon otherwise by all parties and counsel. Copies of any documentation provided by counsel or the parties to the evaluator shall concurrently be sent by the providing person to the other side. Copies shall be sent to counsel if the other side is represented by counsel.

The evaluator may have ex parte contact with the Court regarding scheduling matters.

6. Fees. The evaluator's fee and costs shall be paid _____ **50% by Father**, and **50% by Mother**, subject to reallocation at a future hearing. Fees shall be payable at the time of the first appointment and costs shall be paid as directed by the evaluator. In the event any person (including a child) fails to appear at the time of an appointment, the person responsible for the missed appointment shall be obligated to pay any cost associated with the missed appointment.
7. Evidence. The written report of the evaluator may be received without the necessity of any foundation and without any objection to hearsay statements contained therein or any other objection.
8. Testimony. Each party shall have the right to call the evaluator as a witness. If only one party believes that the evaluator's live testimony is necessary in addition to the written report, that party shall be responsible for 100% of the costs

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incurred in connection with the evaluator testifying
at the court hearing.

9. Immunity. The evaluator acts as a quasi-judicial officer in his or her capacity pursuant to the Order, and as such, the evaluator has limited immunity consistent with Arizona case law applicable to quasi-judicial officers of the Court as to all actions undertaken pursuant to the Court appointment and this Order.

Any alleged impropriety or unethical conduct by the evaluator **shall** be brought to the attention of the Court in writing.

IT IS ORDERED that the requirements of Rule 58(d) are waived and this minute entry is signed as the formal written Order of this Court.

10:46 a.m. Matter concludes.

Dated this 29th day of April, 2002.

/S/ HONORABLE BRIAN K. ISHIKAWA

JUDICIAL OFFICER OF THE SUPERIOR COURT